IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.1365 OF 2003

The State of Maharashtra. ..Appellant.

Vs.

Mehboob Ibrahim Shaikh & anr. .. Respondents.

Smt.V.R.Bhonsale, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 31st January, 2005

P.C.

Heard Smt.V.R.Bhonsale, the learned Additional Public Prosecutor.

2. The State of Maharashtra has preferred this criminal appeal under section 377(1) of the Code of Criminal Procedure, 1973 seeking enhancement of sentence of the respondents (original accused Nos.5 and 6).

3. The respondents alongwith six others were tried for the offence punishable under section 307 read with section 109 of Indian Penal Code and section 25(1-B)(a) of the Indian Arms Act, 1959.

4. Upon conclusion of the trial on the basis of the evidence led by the prosecution, the learned Adhoc Additional Sessions Judge, Thane held that the

present respondent No.1 (original accused No.5) caused fire-arm injuries on the person of the complainant Pyarelal. He has been held guilty of the offence punishable under section 308 IPC. The present respondent No.2 (original accused) has been held guilty of the offence punishable under section 201 read with section 308 of Indian Penal Code. The learned Additional Sessions Judge passed the following operative order of conviction and sentence against the present respondents:

1. Accused No.5 Mehboob Ibrahim Shaikh is hereby convicted under section 308 of I.P.C. and is sentenced to undergo Imprisonment for the period of four years and pay a fine of Rs.50,000/- i/d. he shall serve further Imprisonment for the period of one year and six months.

2. Accused No.6 Imran Abdul Hakim Shaikh is hereby convicted under Section 201 read with Sec. 308 of I.P.C. and is sentenced to undergo Imprisonment for the period of two years and a fine of Rs.10,000/- i/d. he shall serve further Imprisonment for the period of one year....."

5. Having reflected over the available material, we are of the considered view that the sentence awarded by the learned Additional Sessions Judge to the present respondents cannot be said to be inadequate warranting further consideration by us in appeal. As already noticed above, the present respondent No.1 has been convicted for the offence punishable under section 308 of the Indian Penal Code and sentenced to undergo imprisonment for the

period of four years while the present respondent No.2 has convicted under section 201 read with section 308 of the Indian Penal Code and sentenced to undergo imprisonment for the period of two years. The fine imposed by the learned Additional Sessions Judge upon respondent No.1 is to the tune of Rs.50,000/- and on respondent No.2 is to the tune of Rs.10,000/-. The sentence, in our view, therefore, does not deserve to be enhanced.

6. Criminal appeal is dismissed in limine.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)